

REGULATION No. III of 1911.

(Received the assent of His Highness the Maharaja
on the 9th day of May 1911.)

THE CODE OF CIVIL PROCEDURE.

**A Regulation to consolidate and amend the
laws relating to the Procedure of the
Courts of Civil Judicature.**

WHEREAS it is expedient to consolidate and amend
the laws relating to the procedure of the Courts of Civil
Judicature; His Highness the Maharaja is pleased to
enact as follows:—

PRELIMINARY.

1. (1) This Regulation may be cited as the "Code
of Civil Procedure, 1911."

Short title,
commence-
ment and
extent.

(2) It shall come into force on the first day of July
1911.

(3) It shall extend to the whole of Mysore.

2. In this Regulation, unless there is anything
repugnant in the subject or context,—

Definitions.

(1) "Code" includes rules:—

(2) "decree" means the formal expression of an
adjudication which, so far as regards the Court expressing
it, conclusively determines the rights of the parties with re-
gard to all or any of the matters in controversy in the suit
and may be either preliminary or final. It shall be deemed
to include the rejection of a plaint and the determination
of any question within section 47 or section 144, but shall
not include—

(a) any adjudication from which an appeal lies as
an appeal from an order, or

(b) any order of dismissal for default.

Explanation.—A decree is preliminary when further
proceedings have to be taken before the suit can be
completely disposed of. It is final when such adjudication
completely disposes of the suit. It may be partly prelimi-
nary and partly final:

(3) "decree-holder" means any person in whose
favour a decree has been passed or an order capable of
execution has been made:

(4) "district" means the local limits of the jurisdic-
tion of a Principal Civil Court of original jurisdiction
(hereinafter called a "District Court"):

(5) "foreign Court" means a Court not established
or continued by the Government of Mysore:

(6) "foreign judgment" means the judgment of a
foreign Court:

(e) every officer of the Government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience;

(f) every officer whose duty it is, as such officer, to take, receive, keep or expend any property on behalf of the Government, or to make any survey, assessment or contract on behalf of the Government, or to execute any revenue process, or to investigate, or to report on, any matter affecting the pecuniary interests of the Government, or to make, authenticate or keep any document relating to the pecuniary interests of the Government, or to prevent the infraction of any law for the protection of the pecuniary interests of the Government; and

(g) every officer in the service or pay of the Government, or remunerated by fees or commission for the performance of any public duty:

(18) "rules" means rules and forms contained in the First Schedule or made under section 122:

(19) "share in a corporation" shall be deemed to include stock, debenture stock, debentures or bonds: and

(20) "signed" save in the case of a judgment or decree, includes stamped.

3. For the purposes of this Code, every District Court is subordinate to the Chief Court, and every Civil Court of a grade inferior to that of a District Court and every Court of Small Causes is subordinate to the Chief Court and the District Court.

Subordina-
tion of Courts.

4. In the absence of any specific provision to the contrary, nothing in this Code shall be deemed to limit or otherwise affect any special or local law now in force or any special jurisdiction or power conferred, or any special form of procedure prescribed, by or under any other law for the time being in force.

Savings.

5. (1) Where any Revenue Courts are governed by the provisions of this Code in those matters of procedure upon which any special enactment applicable to them is silent, the Government may, by notification in the official Gazette, declare that any portions of those provisions which are not expressly made applicable by this Code shall not apply to those Courts, or shall only apply to them with such modifications as the Government may prescribe.

Application of
the Code to
Revenue
Courts.

(2) "Revenue Court" in sub-section (1) means a Court having jurisdiction under any law to entertain suits or other proceedings relating to the rent, revenue or profits of land used for agricultural purposes, but does not include a Civil Court having original jurisdiction under this Code to try such suits or proceedings as being suits or proceedings of a civil nature.

6. Save in so far as is otherwise expressly provided, nothing herein contained shall operate to give any Court jurisdiction over suits the amount or value of the subject-matter of which exceeds the pecuniary limits (if any) of its ordinary jurisdiction.

Pecuniary
jurisdiction.

7. The following provisions shall not extend to Courts of Small Causes constituted under any law for the time being in force in Mysore or to Courts exercising the jurisdiction of a Court of Small Causes, that is to say,—

Small Cause
Courts.

- (a) so much of the body of the Code as relates to—
 - (i) suits excepted from the cognizance of a Court of Small Causes;
 - (ii) the execution of decrees in such suits;
 - (iii) the execution of decrees against immovable property; and
- (b) the following sections, that is to say,—
 - section 9,
 - sections 91 and 92,
 - sections 94 and 95 so far as they relate to injunctions and interlocutory orders, and sections 96 to 108 and 115.

PART I.

SUITS IN GENERAL.

JURISDICTION OF THE COURTS AND *res judicata*.

Courts to try
all civil suits
unless barred.

9. The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred by any enactment for the time being in force.

Explanation.—A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.

Stay of suit.

10. No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in Mysore having jurisdiction to grant the relief claimed.

Explanation.—The pendency of a suit in a foreign Court does not preclude the Courts in Mysore from trying a suit founded on the same cause of action.

Res judicata.

11. No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

Explanation I.—The expression “former suit” shall denote a suit which has been decided prior to the suit in question whether or not it was instituted prior thereto.

Explanation II.—For the purposes of this section, the competence of a Court shall be determined irrespective of any provisions as to a right of appeal from the decision of such Court.

Explanation III.—The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.

Explanation IV.—Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

Explanation V.—Any relief claimed in the plaint, which is not expressly granted by the decree, shall, for the purposes of this section, be deemed to have been refused.

Explanation VI.—Where persons litigate *bona fide* in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating.

13. A foreign judgment shall be conclusive as to any matter thereby directly adjudicated upon between the same parties or between parties under whom they or any of them claim litigating under the same title except—

When foreign judgment not conclusive.

(a) where it has not been pronounced by a Court of competent jurisdiction;

(b) where it has not been given on the merits of the case;

(c) where it appears on the face of the proceedings to be founded on an incorrect view of international law or a refusal to recognise the law of Mysore in cases in which such law is applicable;

(d) where the proceedings in which the judgment was obtained are opposed to natural justice;

(e) where it has been obtained by fraud;

(f) where it sustains a claim founded on a breach of any law in force in Mysore.

14. The Court shall presume, upon the production of any document purporting to be a certified copy of a foreign judgment, that such judgment was pronounced by a Court of competent jurisdiction, unless the contrary appears on the record; but such presumption may be displaced by proving want of jurisdiction.

Presumption as to foreign judgments.

PLACE OF SUING.

15. Every suit shall be instituted in the Court of the lowest grade competent to try it.

Court in which suits to be instituted.

16. Subject to the pecuniary or other limitations prescribed by any law, suits—

Suits to be instituted where subject-matter situate.

(a) for the recovery of immovable property with or without rent or profits,

(b) for the partition of immovable property,

(c) for foreclosure, sale or redemption in the case of a mortgage of or charge upon immovable property,

(d) for the determination of any other right to or interest in immovable property,

(e) for compensation for wrong to immovable property,

(f) for the recovery of movable property actually under distraint or attachment,

shall be instituted in the Court within the local limits of whose jurisdiction the property is situate:

Provided that a suit to obtain relief respecting, or compensation for wrong to, immovable property held by or on behalf of the defendant may, where the relief sought can be entirely obtained through his personal obedience, be instituted either in the Court within the local limits of whose jurisdiction the property is situate, or in the Court within the local limits of whose jurisdiction the defendant actually and voluntarily resides, or carries on business, or personally works for gain.

Explanation.—In this section “property” means property situate in Mysore.

Suits for immovable property situate within jurisdiction of different Courts.

17. Where a suit is to obtain relief respecting, or compensation for wrong to, immovable property situate within the jurisdiction of different Courts, the suit may be instituted in any Court within the local limits of whose jurisdiction any portion of the property is situate:

Provided that, in respect of the value of the subject-matter of the suit, the entire claim is cognizable by such Court.

Place of institution of suit where local limits of jurisdiction of Courts are uncertain.

18. (1) Where it is alleged to be uncertain within the local limits of the jurisdiction of which of two or more Courts any immovable property is situate, any one of those Courts may, if satisfied that there is ground for the alleged uncertainty, record a statement to that effect and thereupon proceed to entertain and dispose of any suit relating to that property, and its decree in the suit shall have the same effect as if the property were situate within the local limits of its jurisdiction:

Provided that the suit is one with respect to which the Court is competent as regards the nature and value of the suit to exercise jurisdiction.

(2) Where a statement has not been recorded under sub-section (1), and an objection is taken before an appellate or revisional Court that a decree or order in a suit relating to such property was made by a Court not having jurisdiction where the property is situate, the appellate or revisional Court shall not allow the objection unless in its opinion there was, at the time of the institution of the suit, no reasonable ground for uncertainty as to the Court having jurisdiction with respect thereto and there has been a consequent failure of justice.

Suits for compensation for wrongs to person or movables.

19. Where a suit is for compensation for wrong done to the person or to movable property, if the wrong was done within the local limits of the jurisdiction of one Court and the defendant resides, or carries on business, or personally works for gain, within the local limits of the jurisdiction of another Court, the suit may be instituted at the option of the plaintiff in either of the said Courts.

Illustrations.

(a) A, residing in Delhi, beats B in Calcutta. B may sue A either in Calcutta or in Delhi.

(b) A, residing in Delhi, publishes in Calcutta statements defamatory of B. B may sue A either in Calcutta or in Delhi.

Other suits to be instituted where defendants reside or cause of action arises.

20. Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction—

(a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or

- (b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or

(c) the cause of action, wholly or in part, arises.

Explanation I.—Where a person has a permanent dwelling at one place and also a temporary residence at another place, he shall be deemed to reside at both places in respect of any cause of action arising at the place where he has such temporary residence.

Explanation II.—A corporation shall be deemed to carry on business at its sole or principal office in Mysore or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.

Illustrations.

(a) A is a tradesman in Calcutta. B carries on business in Delhi. B, by his agent in Calcutta, buys goods of A and requests A to deliver them to the East Indian Railway Company. A delivers the goods accordingly in Calcutta. A may sue B for the price of the goods either in Calcutta, where the cause of action has arisen, or in Delhi, where B carries on business.

(b) A resides at Simla, B at Calcutta and C at Delhi. A, B and C being together at Benares, B and C make a joint promissory note payable on demand, and deliver it to A. A may sue B and C at Benares, where the cause of action arose. He may also sue them at Calcutta, where B resides, or at Delhi, where C resides; but in each of these cases, if the non-resident defendant objects, the suit cannot proceed without the leave of the Court.

21. No objection as to the place of suing shall be allowed by any appellate or revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, and unless there has been a consequent failure of justice.

Objections to jurisdiction.

22. Where a suit may be instituted in any one of two or more Courts and is instituted in one of such Courts, any defendant, after notice to the other parties may, at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, apply to have the suit transferred to another Court, and the Court to which such application is made, after considering the objections of the other parties (if any), shall determine in which of the several Courts having jurisdiction the suit shall proceed.

Power to transfer suits which may be instituted in more than one Court.

23. (1) Where the several Courts having jurisdiction are subordinate to the same Appellate Court, an application under Section 22 shall be made to the Appellate Court.

To what Court application lies.

(2) Where such Courts are subordinate to different Appellate Courts, the application shall be made to the Chief Court.

24. (1) On the application of any of the parties and after notice to the parties and after hearing such of them as desire to be heard, or of its own motion without such notice, the Chief Court or the District Court may at any stage—

General power of transfer and withdrawal.

(a) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any Court subordinate to it and competent to try or dispose of the same, or

(b) withdraw any suit, appeal or other proceeding pending in any Court subordinate to it, and

(i) try or dispose of the same; or,

(ii) transfer the same for trial or disposal to any Court subordinate to it and competent to try or dispose of the same; or

(iii) retransfer the same for trial or disposal to the Court from which it was withdrawn.

(2) Where any suit or proceeding has been transferred or withdrawn under sub-section (1), the Court which thereafter tries such suit may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn.

(3) The Court trying any suit transferred or withdrawn under this section from a Court of Small Causes shall, for the purposes of such suit, be deemed to be a Court of Small Causes.

INSTITUTION OF SUITS.

Institution of suits.

26. Every suit shall be instituted by the presentation of a plaint or in such other manner as may be prescribed.

SUMMONS AND DISCOVERY.

Summons to defendant.

27. Where a suit has been duly instituted, a summons may be issued to the defendant to appear and answer the claim and may be served in manner prescribed.

Service of foreign summonses.

29. Summonses issued by any Civil or Revenue Court situate beyond the limits of Mysore may be sent to the Courts in Mysore and served as if they had been issued by such Courts. Provided that the Government has, by notification in the official Gazette, declared the provisions of this section to apply to such Courts.

Power to order discovery and the like.

30. Subject to such conditions and limitations as may be prescribed, the Court may, at any time, either of its own motion or on the application of any party,—

(a) make such orders as may be necessary or reasonable in all matters relating to the delivery and answering of interrogatories, the admission of documents and facts, and the discovery, inspection, production, impounding and return of documents or other material objects producible as evidence;

(b) issue summonses to persons whose attendance is required either to give evidence or to produce documents or such other objects as aforesaid;

(c) order any fact to be proved by affidavit.

Summons to witness.

31. The provisions in sections 27 and 29 shall apply to summonses to give evidence or to produce documents or other material objects.

Penalty for default.

32. The Court may compel the attendance of any person to whom a summons has been issued under Section 30 and for that purpose may—

(a) issue a warrant for his arrest;

(b) attach and sell his property;

(c) impose a fine upon him not exceeding five hundred rupees;

(d) order him to furnish security for his appearance and in default commit him to the civil prison.

JUDGMENT AND DECREE.

33. The Court, after the case has been heard, shall pronounce judgment, and on such judgment a decree shall follow. Judgment and decree.

INTEREST.

34. (1) Where and in so far as a decree is for the payment of money, the Court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate as the Court deems reasonable on the aggregate sum so adjudged, from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit. Interest.

(2) Where such a decree is silent with respect to the payment of further interest on such aggregate sum as aforesaid from the date of the decree to the date of payment or other earlier date, the Court shall be deemed to have refused such interest, and a separate suit therefor shall not lie.

COSTS.

35. (1) Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incident to all suits shall be in the discretion of the Court, and the Court shall have full power to determine by whom or out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid. The fact that the Court has no jurisdiction to try the suit shall be no bar to the exercise of such powers. Costs.

(2) Where the Court directs that any costs shall not follow the event, the Court shall state its reasons in writing.

(3) The Court may give interest on costs at any rate not exceeding six per cent per annum, and such interest shall be added to the costs and shall be recoverable as such.

PART II.

EXECUTION.

GENERAL.

36. The provisions of this Code relating to the execution of decrees shall, so far as they are applicable, be deemed to apply to the execution of orders. Application to orders.

37. The expression "Court which passed a decree," or words to that effect, shall, in relation to the execution of decrees, unless there is anything repugnant in the subject or context, be deemed to include,— Definition of "Court which passed a decree."

(a) where the decree to be executed has been passed in the exercise of appellate jurisdiction, the Court of first instance, and

(b) where the Court of first instance has ceased to exist or to have jurisdiction to execute it, the Court which, if the suit wherein the decree was passed was instituted at the time of making the application for the execution of the decree, would have jurisdiction to try such suit.

COURTS BY WHICH DECREES MAY BE EXECUTED.

Court by which decree may be executed.

38. A decree may be executed either by the Court which passed it, or by the Court to which it is sent for execution.

Transfer of decree.

39. (1) The Court which passed a decree may, on the application of the decree-holder, send it for execution to another Court,—

(a) if the person against whom the decree is passed actually and voluntarily resides or carries on business, or personally works for gain, within the local limits of the jurisdiction of such other Court, or

(b) if such person has not property within the local limits of the jurisdiction of the Court which passed the decree sufficient to satisfy such decree and has property within the local limits of the jurisdiction of such other Court, or

(c) if the decree directs the sale or delivery of immovable property situate outside the local limits of the jurisdiction of the Court which passed it, or

(d) if the Court which passed the decree considers for any other reason, which it shall record in writing, that the decree should be executed by such other Court.

(2) The Court which passed a decree may of its own motion send it for execution to any subordinate Court of competent jurisdiction.

Result of execution proceedings to be certified.

41. The Court to which a decree is sent for execution shall certify to the Court which passed it the fact of such execution, or where the former Court fails to execute the same the circumstances attending such failure.

Powers of Court in executing transferred decree.

42. The Court executing a decree sent to it shall have the same powers in executing such decree as if it had been passed by itself. All persons disobeying or obstructing the execution of the decree shall be punishable by such Court in the same manner as if it had passed the decree. And its order in executing such decree shall be subject to the same rules in respect of appeal as if the decree had been passed by itself.

Decrees of certain Courts to be executed in Mysore.

43. A decree of any Civil or Revenue Court in British India or of any Civil or Revenue Court established by the Governor-General of India in Council in Mysore or in the territories of any foreign Prince or State which cannot be executed within the jurisdiction of the Court by which it was passed, may be executed in manner herein provided within the jurisdiction of any Civil Court or of any Revenue Court specially directed by Government in this behalf in Mysore.

Explanation.—An order of the Collector of the Civil and Military Station of Bangalore under sub-section (1) of section 30 of the Indian Income Tax Act, II of 1886, as applied to the Civil and Military Station of Bangalore by the Governor-General of India in Council, shall be deemed to be a decree of a Civil Court such as is mentioned in this section.

44. The Government may, by notification in the official Gazette, declare that the decrees of any Civil or Revenue Courts situate in the territories of any Native Prince or State in alliance with His Majesty and not established or continued by the authority of the Governor-General in Council, or any class of such decrees, may be executed in Mysore as if they had been passed by the Courts in Mysore.

Execution of decrees passed by Courts of other Native States.

46. (1) Upon the application of the decree-holder the Court which passed the decree may, whenever it thinks fit, issue a precept to any other Court which would be competent to execute such decree to attach any property belonging to the judgment-debtor and specified in the precept.

Precepts.

(2) The Court to which a precept is sent shall proceed to attach the property in the manner prescribed in regard to the attachment of property in execution of a decree :

Provided that no attachment under a precept shall continue for more than two months unless the period of attachment is extended by an order of the Court which passed the decree or unless before the determination of such attachment the decree has been transferred to the Court by which the attachment has been made and the decree-holder has applied for an order for the sale of such property.

QUESTIONS TO BE DETERMINED BY COURT EXECUTING DECREE.

47. (1) All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit.

Questions to be determined by the Court executing decree.

(2) The Court may, subject to any objection as to limitation or jurisdiction, treat a proceeding under this section as a suit or a suit as a proceeding and may, if necessary, order payment of any additional Court-fees.

(3) Where a question arises as to whether any person is or is not the representative of a party, such question shall, for the purposes of this section, be determined by the Court.

Explanation.—For the purposes of this section, a plaintiff whose suit has been dismissed and a defendant against whom a suit has been dismissed, are parties to the suit.

LIMIT OF TIME FOR EXECUTION.

48. (1) Where an application to execute a decree not being a decree granting an injunction has been made, no order for the execution of the same decree shall be made upon any fresh application presented after the expiration of twelve years from—

Execution barred in certain cases.

(a) the date of the decree sought to be executed, or,

(b) where the decree or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods, the date of the default in making the payment or delivery in respect of which the applicant seeks to execute the decree.

(2) Nothing in this section shall be deemed to preclude the Court from ordering the execution of a decree upon an application presented after the expiration of the said term of twelve years, where the judgment-debtor has, by fraud or force, prevented the execution of the decree at some time within twelve years immediately before the date of the application.

(3) The provisions of sections 6, 7 and 8 of the Mysore Limitation Regulation shall, as far as they are applicable, extend to a person entitled to make an application for execution of a decree under this section, where such person is, at the time from which the period of limitation is to be reckoned, a minor, or insane or an idiot; provided that this shall not empower a Court to make an order for the execution of a decree where at the date of the coming into force of this enactment it could not make such an order.

TRANSFEREES AND LEGAL REPRESENTATIVES.

Transferee.

49. Every transferee of a decree shall hold the same subject to the equities (if any) which the judgment-debtor might have enforced against the original decree-holder.

Legal representative.

50. (1) Where a judgment-debtor dies before the decree has been fully satisfied, the holder of the decree may apply to the Court which passed it to execute the same against the legal representative of the deceased.

(2) Where the decree is executed against such legal representative, he shall be liable only to the extent of the property of the deceased which has come to his hands and has not been duly disposed of; and, for the purpose of ascertaining such liability, the Court executing the decree may, of its own motion or on the application of the decree-holder, compel such legal representative to produce such accounts as it thinks fit.

PROCEDURE IN EXECUTION.

Powers of Court to enforce execution.

51. Subject to such conditions and limitations as may be prescribed, the Court may, on the application of the decree-holder, order execution of the decree—

- (a) by delivery of any property specifically decreed;
- (b) by attachment and sale or by sale without attachment of any property;
- (c) by arrest and detention in prison;
- (d) by appointing a receiver; or
- (e) in such other manner as the nature of the relief granted may require.

Enforcement of decree against legal representative.

52. (1) Where a decree is passed against a party as the legal representative of a deceased person, and the decree is for the payment of money out of the property of the deceased, it may be executed by the attachment and sale of any such property.

(2) Where no such property remains in the possession of the judgment-debtor and he fails to satisfy the Court that he has duly applied such property of the deceased as is proved to have come into his possession, the decree may be executed against the judgment-debtor to the extent of the property in respect of which he has failed so to satisfy the Court in the same manner as if the decree had been against him personally.

53. For the purposes of section 50 and section 52, property in the hands of a son or other descendant which is liable under Hindu Law for the payment of the debt of a deceased ancestor, in respect of which a decree has been passed, shall be deemed to be property of the deceased which has come to the hands of the son or other descendant as his legal representative.

Liability of
ancestral prop-
erty.

54. Where the decree is for the partition of an undivided estate assessed to the payment of revenue to the Government, or for the separate possession of a share of such an estate, the partition of the estate or the separation of the share shall be made by the Deputy Commissioner or any revenue officer not below the rank of a Deputy Amildar deputed by him in this behalf, in accordance with the law (if any) for the time being in force relating to the partition, or the separate possession of shares, of such estates.

Partition
of estate or
separation
of share.

ARREST AND DETENTION.

55. (1) A judgment-debtor may be arrested in execution of a decree at any hour and on any day, and shall, as soon as practicable, be brought before the Court; and his detention may be in the civil prison of the district in which the Court ordering the detention is situate, or, where such civil prison does not afford suitable accommodation, in any other place which the Government may appoint for the detention of persons ordered by the Courts of such district to be detained:

Arrest and
detention.

Provided, firstly, that, for the purpose of making an arrest under this section, no dwelling-house shall be entered after sunset and before sunrise:

Provided, secondly, that no outer door of a dwelling-house shall be broken open unless such dwelling-house is in the occupancy of the judgment-debtor and he refuses or in any way prevents access thereto, but when the officer authorized to make the arrest has duly gained access to any dwelling-house, he may break open the door of any room in which he has reason to believe the judgment-debtor is to be found:

Provided, thirdly, that, if the room is in the actual occupancy of a woman who is not the judgment-debtor and who, according to the customs of the country, does not appear in public, the officer authorized to make the arrest shall give notice to her that she is at liberty to withdraw, and, after allowing a reasonable time for her to withdraw and giving her reasonable facility for withdrawing, may enter the room for the purpose of making the arrest:

Provided, fourthly, that, where the decree in execution of which a judgment-debtor is arrested, is a decree for the payment of money and the judgment-debtor pays the amount of the decree and the costs of the arrest to the officer arresting him, such officer shall at once release him:

Provided, fifthly, that no person who belongs to the Mysore Military Forces shall, so long as he belongs to such Force, be liable to be arrested for debt under any process issued by the authority of any Court of law.

(2) The Government may, by notification in the official Gazette, declare that any person or class of persons,

whose arrest might be attended with danger or inconvenience to the public shall not be liable to arrest in execution of a decree otherwise than in accordance with such procedure as may be prescribed by the Government in this behalf.

(3) Where a judgment-debtor is arrested in execution of a decree for the payment of money and brought before the Court, the Court shall inform him that he may apply to be declared an insolvent, and that he will be discharged if he has not committed any act of bad faith regarding the subject of the application and if he complies with the provisions of the law of insolvency for the time being in force.

(4) Where a judgment-debtor expresses his intention to apply to be declared an insolvent and furnishes security, to the satisfaction of the Court, that he will within one month so apply, and that he will appear, when called upon, in any proceeding upon the application or upon the decree in execution of which he was arrested, the Court shall release him from arrest, and, if he fails so to apply and to appear, the Court may either direct the security to be realized or commit him to the civil prison in execution of the decree.

Prohibition
of arrest or
detention of
women in exe-
cution of de-
cree for
money.

Subsistence
allowance.

Detention and
release.

56. Notwithstanding anything in this part, the Court shall not order the arrest or detention in the civil prison of a woman in execution of a decree for the payment of money.

57. The Government may fix scales, graduated according to rank, race and nationality, of monthly allowances payable for the subsistence of judgment-debtors.

58. (1) Every person detained in the civil prison in execution of a decree shall be so detained,—

(a) where the decree is for the payment of a sum of money not exceeding fifty rupees, for a period of six weeks and,

(b) in any other case, for a period of six months:

Provided that he shall be released from such detention before the expiration of the said period of six weeks or six months, as the case may be;—

(i) on the amount mentioned in the warrant for his detention being paid to the officer in charge of the civil prison, or

(ii) on the decree against him being otherwise fully satisfied, or

(iii) on the request of the person on whose application he has been so detained, or

(iv) on the omission by the person, on whose application he has been so detained, to pay subsistence allowance:

Provided, also, that he shall not be released from such detention under clause (ii) or clause (iii), without the order of the Court.

(2) A judgment-debtor released from detention under this section shall not merely by reason of his release be discharged from his debt, but he shall not be liable to be re-arrested under the decree in execution of which he was detained in the civil prison.

59. (1) At any time after a warrant for the arrest of a judgment-debtor has been issued, the Court may cancel it on the ground of his serious illness:

Release on
ground of ill-
ness.

(2) Where a judgment-debtor has been arrested, the Court may release him if, in its opinion, he is not in a fit state of health to be detained in the civil prison.

(3) Where a judgment-debtor has been committed to the civil prison, he may be released therefrom—

(a) by the Government, on the ground of the existence of any infectious or contagious disease, or

(b) by the Committing Court, or any Court to which that Court is subordinate, on the ground of his suffering from any serious illness.

(4) A judgment-debtor released under this section may be re-arrested, but the period of his detention in the civil prison shall not in the aggregate exceed that prescribed by section 58.

ATTACHMENT.

60. (1) The following property is liable to attachment and sale in execution of a decree, namely, lands, houses, or other buildings, goods, money, bank-notes, cheques, bills of exchange, hundis, promissory notes, Government securities, bonds or other securities for money, debts, shares in a corporation and, save as hereinafter mentioned, all other saleable property; movable or immovable, belonging to the judgment-debtor; or over which, or the profits of which, he has a disposing power which he may exercise for his own benefit, whether the same be held in the name of the judgment-debtor or by another person in trust for him or on his behalf:

Property li-
able to attach-
ment and sale
in execution of
decree.

Provided that the following particulars shall not be liable to such attachment or sale, namely:—

(a) the necessary wearing-apparel, cooking vessels, beds and bedding of the judgment-debtor; his wife and children, and such personal ornaments as, in accordance with religious usage, cannot be parted with by any woman;

(b) tools of artizans, and, where the judgment-debtor is an agriculturist, his implements of husbandry and such cattle and seed-grain as may, in the opinion of the Court, be necessary to enable him to earn his livelihood as such, and such portion of agricultural produce or of any class of agricultural produce as may have been declared to be free from liability under the provisions of the next following section;

(c) houses and other buildings (with the materials and the sites thereof and the land immediately appurtenant thereto and necessary for their enjoyment) belonging to an agriculturist and occupied by him;

(d) books of account;

(e) a mere right to sue for damages;

(f) any right of personal service;

(g) stipends and gratuities allowed to pensioners of the Government, or payable out of any service family pension fund, notified in the official Gazette by Government in this behalf, and political pensions;

(h) allowances (being less than salary) of any public officer or of any servant of a Railway Company or local authority while absent from duty;

(i) the salary or allowances equal to salary of any such public officer or servant as is referred to in clause (h), while on duty, to the extent of—

(i) the whole of the salary, where the salary does not exceed twenty rupees monthly;

(ii) twenty rupees monthly, where the salary exceeds twenty rupees and does not exceed forty rupees monthly; and

(iii) one moiety of the salary in any other case;

(j) the pay and allowances of persons to whom the Indian Articles of War apply, and of those belonging to the Mysore Military Forces;

(k) the wages of labourers and domestic servants whether payable in money or in kind;

(l) an expectancy of succession by survivorship or other merely contingent or possible right or interest;

(m) a right to future maintenance;

(n) any allowance declared by any law passed by the Government of Mysore, to be exempt from liability to attachment or sale in execution of a decree;

(o) the arms, horse, clothes, equipments, regimental accoutrements and necessities of the members of the Mysore Military Forces;

(p) where the decree relates to a debt due or contracted by an officer who has insured his life under the rules in force relating to the Mysore State Life Insurance, any bonus payable or paid thereunder to such officer or in the event of his death to his nominee or other person or persons entitled to such bonus under the said rules;

(q) any amount payable by the Military Department to the members of the Mysore Military Forces out of a Retiring Fund; and

(r) all inam lands granted to religious and charitable institutions and for the maintenance of persons rendering service therein.

Explanation.—The particulars mentioned in clauses (g), (h), (i), (j), (k), (n), and (q) are exempt from attachment or sale whether before or after they are actually payable.

(2) Nothing in this section shall be deemed—

(a) to exempt houses and other buildings (with the materials and the sites thereof and the lands immediately appurtenant thereto and necessary for their enjoyment) from attachment or sale in execution of decrees for rent of any such house, building, site or land, or in execution of decrees for enforcing a mortgage or charge in respect of such house, building, site or land, or

(b) to affect the provisions of the Army Act, or of any similar law for the time being in force.

Partial
exemption of
agricultural
produce.

61. "The Government may, by general or special order published in the official Gazette, declare that such portion of agricultural produce, or of any class of agricultural produce, as may appear to the Government to be necessary for the purpose of providing until the next harvest for the due cultivation of the land and for the support of the judgment-debtor and his family shall, in

the case of all agriculturists or of any class of agriculturists, be exempted from liability to attachment or sale in execution of a decree.

62. (1) No person executing any process under this Code directing or authorizing seizure of movable property shall enter any dwelling-house after sunset and before sunrise.

Seizure of property in dwelling-house.

(2) No outer-door of a dwelling-house shall be broken open unless such dwelling-house is in the occupancy of the judgment-debtor and he refuses or in any way prevents access thereto, but when the person executing any such process has duly gained access to any dwelling-house, he may break open the door of any room in which he has reason to believe any such property to be.

(3) Where a room in a dwelling-house is in the actual occupancy of a woman who, according to the customs of the country, does not appear in public, the person executing the process shall give notice to such woman that she is at liberty to withdraw; and, after allowing reasonable time for her to withdraw and giving her reasonable facility for withdrawing, he may enter such room for the purpose of seizing the property, using at the same time every precaution, consistent with these provisions, to prevent its clandestine removal.

63. (1) Where property not in the custody of any Court is under attachment in execution of decrees of more Courts than one, the Court which shall receive or realize such property and shall determine any claims thereto and any objection to the attachment thereof shall be the Court of highest grade, or, where there is no difference in grade between such Courts, the Court under whose decree the property was first attached.

Property attached in execution of decrees of several Courts.

(2) Nothing in this section shall be deemed to invalidate any proceeding taken by a Court executing one of such decrees.

64. Where an attachment has been made, any private transfer or delivery of the property attached or of any interest therein and any payment to the judgment-debtor of any debt, dividend or other moneys contrary to such attachment shall be void as against all claims enforceable under the attachment.

Private alienation of property after attachment to be void.

Explanation.—For the purposes of this section, claims enforceable under an attachment include claims for the rateable distribution of assets.

SALE.

65. Where immovable property is sold in execution of a decree and such sale has become absolute, the property shall be deemed to have vested in the purchaser from the time when the property is sold and not from the time when the sale becomes absolute.

Purchaser's title.

66. (1) No suit shall be maintained against any person claiming title under a purchase certified by the Court in such manner as may be prescribed on the ground that the purchase was made on behalf of the plaintiff or on behalf of some one through whom the plaintiff claims.

Suit against purchaser not maintainable on ground of purchase being on behalf of plaintiff.

(2) Nothing in this section shall bar a suit to obtain a declaration that the name of any purchaser certified as aforesaid was inserted in the certificate fraudulently or

without the consent of the real purchaser, or interfere with the right of a third person to proceed against that property, though ostensibly sold to the certified purchaser, on the ground that it is liable to satisfy a claim of such third person against the real owner.

Power for Government to make rules as to sales of land in execution of decrees for payment of money.

67. The Government may, by notification in the official Gazette, make rules for any local area imposing conditions in respect of the sale of any class of interests in land in execution of decrees for the payment of money, where such interests are so uncertain or undetermined as, in the opinion of the Government, to make it impossible to fix their value.

DELEGATION TO DEPUTY COMMISSIONER OF POWER TO EXECUTE DECREES AGAINST IMMOVABLE PROPERTY.

Power to prescribe rules for transferring to Deputy Commissioner execution of certain decrees.

68. The Government may declare, by notification in the official Gazette, that in any local area the execution of decrees in cases in which a Court has ordered any immovable property to be sold, or the execution of any particular kind of such decrees, or the execution of decrees ordering the sale of any particular kind of, or interest in, immovable property, shall be transferred to the Deputy Commissioner.

Provisions of Third Schedule to apply.

69. The provisions set forth in the Third Schedule shall apply to all cases in which the execution of a decree has been transferred under the last preceding section.

Rules of procedure.

70. (1) The Government may make rules consistent with the aforesaid provisions—

(a) for the transmission of the decree from the Court to the Deputy Commissioner, and for regulating the procedure of the Deputy Commissioner and his subordinates in executing the same, and for retransmitting the decree from the Deputy Commissioner to the Court;

(b) conferring upon the Deputy Commissioner, or any revenue officer not below the rank of a Deputy Amildar, all or any of the powers which the Court might exercise in the execution of the decree if the execution thereof had not been transferred to the Deputy Commissioner;

(c) providing for orders made by the Deputy Commissioner or other revenue officer, or orders made on appeal with respect to such orders, being subject to appeal to, and revision by, superior revenue authorities as nearly as may be as the orders made by the Court, or orders made on appeal with respect to such orders, would be subject to appeal to, and revision by, appellate or revisional Courts under this Code or other law for the time being in force if the decree had not been transferred to the Deputy Commissioner.

Jurisdiction of Civil Courts barred.

(2) A power conferred by rules made under subsection (1) upon the Deputy Commissioner or other revenue officer, or upon any appellate or revisional authority, shall not be exerciseable by the Court, or by any Court in exercise of any appellate or revisional jurisdiction which it has with respect to decrees or orders of the Court.

Deputy Commissioner deemed to be acting judicially.

71. In executing a decree transferred to the Deputy Commissioner under section 68, the Deputy Commissioner and his subordinates shall be deemed to be acting judicially.

72. (1) Where in any local area in which no declaration under section 68 is in force the property attached consists of land or of a share in land, and the Deputy Commissioner represents to the Court that the public sale of the land or share is objectionable and that satisfaction of the decree may be made within a reasonable period by a temporary alienation of the land or share, the Court may authorize the Deputy Commissioner to provide for such satisfaction in the manner recommended by him instead of proceeding to a sale of the land or share.

Where Court may authorize Deputy Commissioner to stay public sale of land.

(2) In every such case the provisions of sections 69 to 71 and of any rules made in pursuance thereof shall apply so far as they are applicable.

DISTRIBUTION OF ASSETS.

73. (1) Where assets are held by a Court and more persons than one have, before the receipt of such assets, made application to the Court for the execution of decrees for the payment of money passed against the same judgment-debtor and have not obtained satisfaction thereof, the assets, after deducting the costs of realization, shall be rateably distributed among all such persons:

Proceeds of execution sale to be rateably distributed among decree-holders.

Provided as follows:—

(a) Where any property is sold subject to a mortgage or charge, the mortgagee or incumbrancer as such shall not be entitled to share in any surplus arising from such sale;

(b) where any property liable to be sold in execution of a decree is subject to a mortgage or charge, the Court may, with the consent of the mortgagee or incumbrancer, order that the property be sold free from the mortgage or charge, giving to the mortgagee or incumbrancer the same interest in the proceeds of the sale as he had in the property sold;

(c) where any immovable property is sold in execution of a decree ordering its sale for the discharge of an incumbrance thereon, the proceeds of sale shall be applied—

first, in defraying the expenses of the sale;

secondly, in discharging the amount due under the decree;

thirdly, in discharging the interest and principal moneys due on subsequent incumbrances (if any); and,

fourthly, rateably among the holders of decrees for the payment of money against the judgment-debtor, who have, prior to the sale of the property, applied to the Court which passed the decree ordering such sale for execution of such decrees, and have not obtained satisfaction thereof.

(2) Where all or any of the assets liable to be rateably distributed under this section are paid to a person not entitled to receive the same, any person so entitled may sue such person to compel him to refund the assets.

(3) Nothing in this section affects any right of the Government.